



# California Fair Political Practices Commission

January 6, 1987

James W. Anderson  
Attorney at Law  
Brunick & Pyle  
1839 Commercenter West  
P.O. Box 6425  
San Bernardino, CA 92412

Re: Your Request for Advice  
Our File No. A-86-324

Dear Mr. Anderson:

You have requested advice concerning your duties under the conflict of interest provisions of the Political Reform Act (the Act).<sup>1/</sup>

## QUESTION

As the former executive officer of the California Regional Water Quality Control Board, Santa Ana Region (the "regional board"), are you prohibited from representing the Chino Basin Municipal Water District ("Chino Basin") in its appeal from an adverse decision by the regional board?

## CONCLUSION

The Act does not prohibit you from representing Chino Basin in its appeal of the regional board's adverse decision.

## FACTS

From January 1, 1973, until September 30, 1985, you were the executive officer of the regional board. In that position, you were responsible to the regional board as its confidential employee, and recommended that the regional board take various actions regarding dischargers of waste, such as Chino Basin. You had no authority to recommend, advise or approve any action before the State Water Resources Control Board ("Water Resources").

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code.

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In January and February 1985, the regional board's staff, with your involvement, rescinded in part a previous order and notified Chino Basin that it must halt the discharge of waste water from Chino Basin Regional Plant No. 3 (the "Fontana Plant") into an orchard. In March 1985, Chino Basin asked the regional board to reconsider its decision. On June 6, 1985, you gave notice to the board of your resignation, effective in September 1985.

In July 1985, you directed the regional board's staff to meet with the staff of Chino Basin and discuss its request. After that time, you had no further involvement in the matter, other than to discuss with your successor certain procedural steps related to the request. Although a staff report was submitted in September 1985, you did not direct the preparation of the report, never saw the report, did not prepare for the hearing on Chino Basin's request for reconsideration, made no recommendation to the regional board on the request, and did not receive or use any confidential information related to the request.

Following its hearing on October 11, 1985, the regional board rejected Chino Basin's request for reconsideration. The effect of that decision was to prohibit the discharge of waste water from Chino Basin's plant into the orchard. You did not participate in the hearing in any manner.

In February 1986, the regional board rescinded in full the waste discharge requirements previously in effect. On May 2, 1986, Chino Basin applied to the regional board for new waste discharge requirements for Regional Plant No. 3. Rather than discharging into an orchard, Chino Basin proposed discharge into a solids handling facility, such as drying beds.<sup>2/</sup> The regional board's staff recommended to the board that it accept Chino Basin's application. On September 12, 1986, following a hearing on Chino Basin's new application, the regional board refused to adopt its staff's recommendation and rejected Chino Basin's proposal. You took no part in this proceeding for either the regional board or Chino Basin.

Chino Basin appealed the adverse decision to Water Resources. During the course of that appeal, a legal issue

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<sup>2/</sup> Drying beds are shallow ponds into which certain discharge materials are placed for evaporation.

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arose regarding the adequacy of the appeal. Chino Basin asked you to represent it in the appeal.

As of this date, you have filed a written argument on behalf of Chino Basin with Water Resources, and you have made an appearance before the regional board to ask for a rehearing. In November 1986, Water Resources rejected the written argument, but on December 12, 1986, the regional board granted Chino Basin's request for a rehearing. Rehearing is scheduled for February 11, 1987. Nothing is pending currently before Water Resources.

You have not accepted compensation from Chino Basin for your efforts on its behalf, preferring to await our advice. You are not planning on performing any additional work for Chino Basin. However, if Chino Basin loses its appeal, you might be retained on its behalf again.

#### ANALYSIS

Sections 87401 and 87402 provide:

87401. No former state administrative official, after the termination of his or her employment or term of office, shall for compensation act as agent or attorney for, or otherwise represent, any other person (other than the State of California) before any court or state administrative agency or any officer or employee thereof by making any formal or informal appearance, or by making any oral or written communication with the intent to influence, in connection with any judicial, quasi-judicial or other proceeding if both of the following apply:

(a) The State of California is a party or has a direct and substantial interest.

(b) The proceeding is one in which the former state administrative official participated.

87402. No former state administrative official, after the termination of his or her employment or term of office shall for compensation aid, advise, counsel, consult or assist in representing any other person (except the State of California) in any proceeding in which the official would be prohibited from appearing under Section 87401.

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Your previous employment with the regional board makes you a former state administrative official who is subject to the restrictions of Sections 87401 and 87402. (Section 87400(b).) Accordingly, you are prohibited from representing, aiding, advising, counseling, consulting, or assisting in representing any person,<sup>3/</sup> for compensation, in connection with any proceeding in which you participated as a regional board employee.

For purposes of Sections 87401 and 87402, you "participated" in a proceeding if you took part in the proceeding "personally and substantially through decision, approval, disapproval, formal written recommendation, rendering advice on a substantial basis, investigation or use of confidential information" as an employee of the regional board. (Section 87400(d).) This would include proceedings in which you had a supervisory role.

Chino Basin's requests are "proceedings" within the meaning of Section 87400(c). The remaining issues are (1) whether the May 2, 1986 application and the March 1985 request are part of the same proceeding; and (2) whether you participated in the original proceeding.

The Commission has interpreted the word "proceeding," in connection with Coastal Commission permit applications, to refer to a specific permit application, including all of the procedural stages involved in the application. A new permit application, even if it involves the same tract of land, or some of the same issues, as a previous application, ordinarily is considered a new proceeding. (See enclosed copies of the following advice letters: Berrigan, No. A-86-045; Hinderer, No. A-83-255; and Galanter, No. A-82-079.)

Here, the same plant is involved in both proceedings, and the issue of where to discharge waste is present in both proceedings. However, the May 2, 1986 application suggests a completely different method of discharge from that used previously. It was not a continuation of the previous proceeding, which ended with the regional board's October 11, 1985 rejection of Chino Basin's request for reconsideration. Instead, the May 2, 1986 request constituted a new proceeding, rather than the same one in which you participated when you

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<sup>3/</sup> "Person" is broadly defined under the Act to include any organization or group of persons acting in concert. (Section 82047.) Accordingly, Sections 87401 and 87402 restrict your ability to represent either individuals or Chino Basin in certain proceedings.

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were the regional board's executive officer. Accordingly, based on the facts you have presented, you are not prohibited from representing Chino Basin for compensation in its appeal of the decision made on the May 1986 application because the May 1986 proposal is not the same proceeding as the 1985 action.

You should also be aware that if you receive no compensation for your representation, then Section 87400, et seq., has no application to your situation. (See enclosed copy of the Friedman Advice Letter, No. A-83-214.) In light of the resolution we have reached, it is unnecessary to consider the issue of whether you participated in the original proceeding.

If you have any questions regarding this letter, please contact me at (916) 322-6441.

Very truly yours,

Diane M. Griffiths  
General Counsel



By: Michael I. Pruden  
Staff Counsel

DMG:MIP:km

F P F C  
Dec 4 8 29 AM '86  
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PLEASE REFER TO

December 2, 1986

John McLean, Staff Counsel  
Fair Political Practices Commission  
Post Office Box 807  
Sacramento, CA 95814

Dear Mr. McLean:

This is to request your opinion regarding my potential conflict of interest under the applicable Government Code sections which deal with activities of former state administrative officials. The specifics of my situation are as follows:

1. I was and acted as the Executive Officer of the California Regional Water Quality Control Board, Santa Ana Region from January 1, 1973, until September 30, 1985. In this position I was responsible to the Regional Board as their confidential employee, and recommended actions to the Regional Board regarding waste dischargers, such as the Chino Basin Municipal Water District. I had no authority to recommend, advise or approve any action before the State Water Resources Control Board.

2. On October 11, 1985, the Regional Board conducted a hearing regarding the waste discharge from Chino Basin Regional Plant No. 3 (Fontana Plant). The Regional Board decided to disallow the discharge of reclaimed waste water from the plant onto an orchard. Although I was aware of the request of the Chino Basin Municipal Water District prior to leaving the Regional Board, I took no active part in the preparation for the hearing, nor did I participate in the hearing or make any recommendation to the Regional Board prior to my leaving State service.

3. On May 2, 1986, Chino Basin Municipal Water District applied to the Regional Board for new waste discharge requirements for Regional Plant No. 3. On September 12, 1986, the Regional Board conducted a hearing on the new request and refused to adopt the staff recommendation. Chino Basin Municipal Water District filed an appeal with the State Water Resources Control Board. I have taken no part in the

John McLean, Staff Counsel  
Fair Political Practices Commission  
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proceedings on the new request by Chino Basin Municipal Water District, nor did I participate in the Regional Board hearing nor render any assistance to Chino Basin Municipal Water District or the Regional Board on this request or new hearing.

4. An issue has been raised regarding the adequacy of the appeal to the State Water Resources Control Board. Chino Basin Municipal Water District has requested that I represent them on this appeal and any further action with the State Board regarding the appeal.

ISSUE: Since the September 12, 1986 action by the Regional Board was a proceeding which was initiated by Chino Basin Municipal Water District after I left State service, is participation before the Regional Board prohibited by operation of the Government Code?

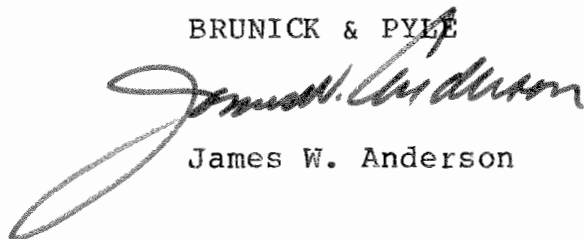
ISSUE: Since the appeal to the State Board is a proceeding initiated by the Chino Basin Municipal Water District and will be heard by the State Water Resources Control Board, a separate State agency, is my participation prohibited by operation of the Government Code?

ISSUE: Is participation before the Regional Board, the State Board, and/or the Superior Court on behalf of Chino Basin Municipal Water District with respect to these matters prohibited, if no compensation is received from Chino Basin Municipal Water District?

Please let me know if you need further facts to fully understand this situation. Thank you for your assistance.

Sincerely,

BRUNICK & PYLE

A handwritten signature in dark ink, appearing to read "James W. Anderson", is written over the typed name. The signature is fluid and cursive, with a large loop at the end.

James W. Anderson

JWA:jro



# California Fair Political Practices Commission

December 4, 1986

James W. Anderson  
Brunick & Pyle  
P.O. Box 6425  
San Bernardino, CA 92412

Re: 86-324

Dear Mr. Anderson:

Your letter requesting advice under the Political Reform Act was received on December 4, 1986 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Robert E. Leidigh, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days. You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script that reads "Diane M. Griffiths".

Diane M. Griffiths  
General Counsel

DMG:plh